

**REMARKS**

An excess claim fee payment letter is submitted herewith for four (4) excess total claims and three (3) excess independent claims.

Claims 1-24 are all the claims presently pending in the application. Claims 1-17 have been amended to define more clearly and particularly the present invention. Claim 7 is amended to incorporate some of the features of claim 8. Claims 18-24 have been added to provide more varied protection for the invention.

It is noted that the claim amendments are made only for more particularly pointing out the invention, and not for distinguishing the invention over the prior art, narrowing the claims or for any statutory requirements of patentability.

Further, Applicant specifically states that no amendment to any claim herein should be construed as a disclaimer of any interest in or right to an equivalent of any element or feature of the amended claim.

Claims 1, 3, 5, 6, 8-10, 12, 13, and 15-17 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite.

Claims 1-17 stand rejected on prior art grounds. Claim 7 stands rejected under 35 U.S.C. § 102(e) as being anticipated by Cherkasova, et al. (U.S. Patent No. 6,360,270; hereinafter "Cherkasova"). Claims 1-4, 6, 8-11, 13, 14, 16, and 17 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Cherkasova. Claims 5, 12, and 15 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Cherkasova, in view of Fodor, et al. (U.S. Patent No. 6,438,104; hereinafter "Fodor").

These rejections are respectfully traversed in the following discussion.

**I. THE CLAIMED INVENTION**

The claimed invention is directed to a server and network system and received load control method.

In an illustrative, non-limiting embodiment as defined by independent claim 1, a server includes comparing means for comparing an amount of received load corresponding

to received data transferred from plural clients with a designated value and judging means for judging whether or not a part of the received data should be discarded. The server controls the received load corresponding to the received data transferred from the plural clients based on a result of the judging means.

In another exemplary embodiment of the invention, as defined by independent claim 3, the server includes shaper value setting means for setting a shaper value based on a receiving capacity of the server and shaper means for comparing an amount of received load corresponding to received data transferred from plural clients and shaper value, and judging whether or not a part of the received data transferred from the plural clients should be discarded.

Independent claims 7, 10, and 14 recite similar features.

Conventional methods of controlling received load of a server have generally been accomplished by limiting the number of clients connecting to the server or modifying the structures of the servers, such as increasing storage capacity and executing speed, or by providing multiple servers. However, each of these conventional solutions is very expensive.

The claimed invention, on the other hand, compares an amount of received load correspondingly to received data transferred from plural clients with a designated value. This allows the reduction of the receiving load at the server, prevents deterioration of the throughput of the server, and provides a received load control method at the network system (e.g., see specification at page 3, lines 11-14). In order to limit the received load to the designated value, the server monitors the amount of the received data transferred from the plural clients at the input port of the server. When the received load exceeds the designated value, a part of the received data exceeding the designated value is discarded and the remaining part of the received data is transmitted to the server (e.g., see specification at page 6, lines 15-19).

## **II. INDEFINITENES REJECTIONS**

Claims 1, 3, 5, 6, 8-10, 12, 13, and 15-17 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. These claims are amended herewith to define more clearly the features of the present invention.

Applicant submits that claims 1, 3, 5, 6, 8-10, 12, 13, and 15-17 are clear and definite, and accordingly, the rejection of these claims should be withdrawn.

## **III. CLAIM REJECTIONS BASED ON PRIOR ART GROUNDS**

Claims 1-17 stand rejected on prior art grounds.

As a preliminary matter, Applicant notes that the Office Action erroneously interprets some of the claims to include limitations that are not recited in the claims and paraphrases other language of the claims.

For example, the Office Action erroneously interprets claim 1 to include a “means for determining” (e.g., see Office Action at page 10, lines 6-7). However, claim 1 does not recite this limitation.

As another example, the Office Action erroneously interprets claim 3 to recite “determining the amount of received load”, among others things. However, claim 3 does not recite this limitation.

Applicant notes that all of the claims should be construed based on the actual language of the claims and additional limitations may not be imported from the specification (e.g., see M.P.E.P. § 2111.01) or elsewhere.

**A.** Claim 7 stands rejected under 35 U.S.C. § 102(e) as being anticipated by Cherkasova. For at least the following reasons, Applicant respectfully traverses this rejection.

Claim 7 is amended to incorporate some of the features of claim 8. Claim 8 correspondingly is canceled without prejudice or disclaimer.

Applicant submits that Cherkasova does not disclose or suggest all of the recitations

of independent claim 7.

Cherkasova clearly is different than the claimed invention. That is, Cherkasova compares a new message to a transaction list to determine if the new message is part of a current session in order to finish each active session with “quality service” (e.g., see column 2, lines 47-49). However, if the new message corresponds to a session that is identified in the transaction list (i.e., the new request message is part of a current session), then the processing proceeds directly to the server (see Figure 2, steps 32, 34, and 42) without determining whether sufficient resources are available in the server.

On the other hand, the claimed invention recites, *inter alia*, that “said server compares the amount of said received load corresponding to said received data with a designated value and judges whether a part of said received data should be discarded based on said judged result” (emphasis added) in order to prevent the load on the server from exceeding a designated value.

Thus, Cherkasova does not necessarily disclose or suggest a server that “compares the amount of said received load corresponding to said received data with a designated value and judges whether a part of said received data should be discarded based on said judged result”, as claimed in claim 7.

Instead, Cherkasova merely discloses comparing a new request message with an entry transaction list (e.g., see Figure 2 and column 5, lines 9-21, and lines 41-65). Again, if the new request message corresponds to a session that is identified in the transaction list (i.e., the new request message is part of a current session), then the processing proceeds directly to the server (see Figure 2, steps 32, 34, and 42). However, if the new request message does not correspond to a session that is identified in the transaction list (i.e., the new request message is part of a new session), only then does the admission controller determine whether sufficient resources are available in the server to adequately service a new session (e.g., see column 5, lines 41-46; see also, Figure 2, steps 32, 34, and 36).

That is, the admission controller only determines whether adequate system resources are available in the server when the new request message does not correspond to

a session that is identified in the transaction list. Alternatively, if the new message is identified in the transaction list, then the new message is passed directly to the server without regard for the availability of the system resources of the server. This teaches away from the claimed invention.

To summarize, Cherkasova clearly is different than the claimed invention. Cherkasova compares the new message to a transaction list to determine if the new message is part of a current session (e.g., see column 2, lines 47-49). In contrast, the claimed invention compares the amount of the received load corresponding to the received data with a designated value.

Thus, Cherkasova neither discloses nor suggests all of the recitations of independent claim 7, and accordingly, the anticipation rejection of claim 7 should be withdrawn.

**B.** Claims 1-4, 6, 8-11, 13, 14, 16 and 17 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Cherkasova. For at least the following reasons, Applicant respectfully traverses this rejection.

First, Applicant submits that Cherkasova does not disclose or suggest all of the recitations of independent claim 1, since Cherkasova does not disclose or suggest any structure, reasonable equivalents thereof, or identity of function necessary for the claimed “comparing means”.

As mentioned above, Cherkasova clearly is different than the claimed invention. That is, Cherkasova compares a new message to a transaction list to determine if the new message is part of a current session in order to finish each active session with “quality service” (e.g., see column 2, lines 47-49).

On the other hand, the claimed invention compares an amount of received load corresponding to received data transferred from plural clients with a designated value in order to prevent the load on the server from exceeding a designated value.

Particularly, Cherkasova does not necessarily disclose or suggest “comparing means

for comparing an amount of received load corresponding to received data transferred from plural clients with a designated value", as claimed in claim 1.

That is, in Cherkasova, the admission controller only determines whether adequate system resources are available in the server when the new request message does not correspond to a session that is identified in the transaction list. Alternatively, if the new message is identified in the transaction list, then the new message is passed directly to the server without regard for the availability of the system resources of the server.

Thus, Cherkasova does not disclose or suggest any structure, equivalents thereof, or identity of function necessary for the claimed "comparing means", and the rejection of independent claim 1 should be withdrawn.

Second, assuming *arguendo* that Cherkasova would have disclosed or suggested at the time of the invention, the aforementioned feature, Applicant respectfully submits that the Office Action fails to establish a reasonable motivation for modifying Cherkasova to arrive at the claimed invention, since the teachings of Cherkasova are contrary to (i.e., teach away from) the motivation provided by the Office Action for modifying Cherkasova to arrive at the claimed invention.

For example, the Office Action acknowledges that Cherkasova does not explicitly state that the received data is necessarily "discarded". However, the Office Action alleges that Cherkasova discloses that, if the system is above a threshold, the excessive messages are "unaccepted" and thus the connections are "refused". The Office Action speculates that a person of ordinary skill in the art would have readily recognized the desirability and advantages of "discarding" packets instead of deferring them, because this would eliminate the need for extra deferral resources at the server, and thus, the claimed "judging means for judging whether or not a part of said received data should be discarded", as recited in claim 1, allegedly would have been obvious from Cherkasova (e.g., see Office Action at pages 10-11, bridging paragraph).

However, Cherkasova specifically discloses that discarding packets is undesirable. That is, Cherkasova discloses that "a need exists for an admission control system which

responds to all messages, whether or not those messages are actually admitted (e.g., see Cherkasova at column 2, lines 40-44; emphasis added).

Thus, Cherkasova teaches away from discarding messages and, instead, teaches responding to all messages. Accordingly, Applicant submits that it would not have been obvious to modify Cherkasova in the manner alleged in the Office Action to arrive at the claimed invention, and therefore, claim 1 would not have been obvious from Cherkasova.

Independent claims 3, 10, and 14 similarly recite “comparing an amount of received load corresponding to received data transferred from plural clients” with a designated value or a shaper value. Thus, Cherkasova also does not disclose or suggest all of the recitations of independent claims 3, 10, and 14.

Claims 2, 4, 6, 9, 13, 16, and 17 also are patentable over Cherkasova at least by virtue of their dependency from independent claims 1, 3, 7, 10, and 14, respectively.

C. Claims 5, 12 and 15 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Cherkasova, in view of Fodor.

For the reasons set forth above, Cherkasova neither discloses nor suggests all of the recitations of claims 3, 10, and 15, from which claims 5, 12, and 15 depend. Moreover, Fodor does not make up for the deficiencies of Cherkasova. Indeed, Fodor is not even relied upon for such features.

Therefore, Applicant respectfully submits that claims 5, 12, and 15 are patentable over the cited references at least by virtue of their dependency from claims 3, 10, and 15, and the rejection of these claims should be withdrawn.

## **VI. NEW CLAIMS**

New claims 18-24 are added to provide more varied protection for the present invention. Claims 18-24 are patentable over the cited references for reasons similar to those set forth above with respect to claims 1-17, and accordingly, allowance of claims 18-24 respectfully is requested.

## V. FORMAL MATTERS AND CONCLUSION

Minor errors have been corrected in the disclosure.

The Office Action objects to the specification. The specification is amended herewith to obviate these objections and withdrawal of these objections respectfully is requested.

The Office Action also objects to claims 4, 5, 10, 12, and 14. The claims are amended herewith to obviate these objections, as well as to make editorial changes in conformance with U.S. patent practice. Withdrawal of these objections respectfully is requested.

It is noted that, for some reason, the Examiner has crossed-out the Japanese references listed on the form PTO 1449 for the Information Disclosure Statements filed on December 28, 2000. The Examiner is again requested to consider the references (e.g., Japanese Patents Nos. 11-122260 and 11-150544) submitted in the IDS of December 28, 2000. It is noted that the IDS was in full compliance with M.P.E.P. § 609 AND 37 C.F.R. § 1.98. The IDS specifically states that a concise statement of relevance for the reference is found at page 2 of the present application. Again, this is in full compliance with M.P.E.P. § 609 and 37 C.F.R. §§ 1.97-1.99. For the Examiner's convenience, another PTO-1449 form is attached hereto for the Examiner's consideration and initials.

In view of the foregoing, Applicant submits that claims 1-24, all the claims presently pending in the application, are patentably distinct over the prior art of record and are in condition for allowance. The Examiner is respectfully requested to pass the above application to issue at the earliest possible time.

Should the Examiner find the application to be other than in condition for allowance, the Examiner is requested to contact the undersigned at the local telephone number listed below to discuss any other changes deemed necessary in a telephonic or personal interview.



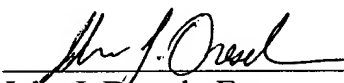
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The Commissioner is hereby authorized to charge any deficiency in fees or to credit any overpayment in fees to Attorney's Deposit Account No. 50-0481.

Respectfully Submitted,

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